

HOUSE BILL 1267

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 56,
relative to the sale of insurance for portable
electronics.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding sections 2 through 8 as a new, appropriately designated chapter.

SECTION 2. For purposes of this chapter:

- (1) "Commissioner" means the commissioner of commerce and insurance;
- (2) "Customer" means a person who purchases portable electronics or services;
- (3) "Covered customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics;
- (4) "Department" means the department of commerce and insurance;
- (5) "Portable electronics" means electronic devices that are portable in nature, the devices' accessories, and services related to the use of the devices;
- (6)
 - (A) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics which may cover portable electronics against any one (1) or more of the following causes of loss:
 - (i) Loss;
 - (ii) Theft;
 - (iii) Mechanical failure;
 - (iv) Malfunction;
 - (v) Damage; or

(vi) Other applicable perils.

(B) "Portable electronics insurance" does not include:

(i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, or normal wear and tear;

(ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(ii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy;

(5) "Portable electronics transaction" means:

(A) The sale or lease of portable electronics by a vendor to a customer;

or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer;

(6) "Supervising agency" means a business entity that is a licensed insurance producer; and

(7) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

SECTION 3.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance. A vendor who has met the requirements of this chapter shall be entitled to a limited lines business entity producer's license, without examination, authorizing the vendor to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued to a vendor under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(c) In connection with a vendor's application for licensure and quarterly thereafter, the vendor shall provide a list to the commissioner of all locations in this state at which the vendor offers coverage.

(d) Notwithstanding any law to the contrary, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage only in those activities that are expressly permitted in this section.

SECTION 4.

(a) At every location where portable electronics insurance is offered to customers, brochures or other written materials shall be made available to a prospective customer that:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(A) The identity of the insurer;

(B) The identity of the supervising agency;

(C) The amount of any applicable deductible and how it is to be paid;

(D) Benefits of the coverage; and

(E) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including a description of the following:

(A) Any requirement to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(B) Proof of loss requirements; and

(5) State that the customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(b) Notwithstanding any law to the contrary, portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics under which individual customers may elect to enroll for coverage.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

SECTION 5.

(a) Notwithstanding any law to the contrary, the employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter provided that:

(1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to Section 3;

(2) The insurer issuing the portable electronics insurance appoints a supervising agency to supervise the administration of the program including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision (a)(2) shall comply with the following:

(A) The training shall be delivered to all employees and authorized representatives of the vendors who sell or offer portable electronics insurance;

(B) The training may be provided in electronic form. However, if the training is conducted in an electronic form the supervising agency shall implement a program of in-person training conducted by licensed employees of the supervising agency to supplement the electronic training; and

(C) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under Section 4;

(3) No employee or authorized representative of a vendor of portable electronics shall advertise, represent, or otherwise hold himself or herself out as a non limited lines licensed insurance producer; and

(4) No employee or authorized representative of a vendor of portable electronics is compensated based primarily on the number of customers enrolled for portable electronics insurance coverage; provided, however, that the

employee or authorized representative may receive compensation for activities under the limited lines license which is incidental to their overall compensation.

(b)

(1) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the customer's bill. If the charge for coverage is included with the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the customer that the coverage is included with the purchase of the portable electronics or related services.

(2) Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising agency within sixty (60) days of receipt.

(3) All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

(4) Vendors may receive compensation for billing and collection services.

SECTION 6. If a vendor of portable electronics or its employee or authorized representative violates this chapter, the commissioner is authorized to:

(a) After notice and hearing, impose fines not to exceed five hundred dollars (\$500) per violation and five thousand dollars (\$5,000) in the aggregate for such conduct; and

(b) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this article, including:

(1) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred; and

(2) Suspending or revoking the ability of individual employees or authorized representatives to act under the license.

SECTION 7. Notwithstanding any other law to the contrary:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least sixty (60) days notice;

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes;

(3) Notwithstanding subdivision (1):

(A) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder; and

(B) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(i) For nonpayment of premium;

(ii) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(iii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer;

(4) If a portable electronics insurance policy is terminated by a policyholder, then the policyholder shall mail or deliver written notice to each enrolled customer advising the customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the customer at least thirty (30) days prior to the termination; and

(5)

(A) Whenever notice by an insurer is required pursuant to this section, the notice shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer;

(B) If notice is mailed pursuant to this section, then the insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service;

(C) An insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected

enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

SECTION 8.

(a) A sworn application for a license under this chapter shall be made to and filed with the commissioner on forms prescribed and furnished by the department.

(b) The application shall:

(1) Provide the name, residence address, and other information required by the department for an individual that is designated by the applicant as the individual responsible for the vendor's compliance with the requirements of this chapter. Notwithstanding any other law, the individual required to be designated by the vendor pursuant to this section and § 56-6-106(b)(2) shall not be required to be a principal or officer of the vendor but shall hold a current producer license in this state;

(2) Appoint the commissioner as the applicant's attorney to receive service of all legal process issued against it in any civil action or proceeding in this state and agreeing that process so served shall be valid and binding against the applicant. The appointment shall be irrevocable, shall bind the company and any successor in interest as the assets or liabilities of the applicant, and shall remain in effect as long as the applicant's licensure remains in force in this state; and

(3) Provide the location of the applicant's home office.

(c) Applications for licensure under this chapter shall be made within ninety (90) days of the date the application is made available by the commissioner.

(d) Initial licenses issued pursuant to this chapter shall be valid for a period of twenty-four (24) months and expire on biennially on March 1 of the renewal year assigned by the commissioner.

(e)

(1) Except as provided in subdivision (e)(2), each vendor of portable electronics licensed under this chapter shall pay to the commissioner a fee as prescribed by the commissioner but in no event shall the fee exceed one thousand dollars (\$1,000) for an initial portable electronics limited lines license and five hundred dollars (\$500) for each renewal thereof.

(2) The fee prescribed for a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in this state shall not exceed one hundred dollars (\$100) for an initial license and for each renewal thereof.

SECTION 9. Tennessee Code Annotated, Section 56-6-110, is amended by deleting the section in its entirety and by substituting instead the following:

56-6-110.

An individual who has met the requirements of § 56-6-106 shall be entitled to a limited lines producer license without examination in one (1) or more of the following limited lines:

- (1) Insurance on personal effects carried as baggage or limited travel accident insurance sold in connection with transportation provided by a common carrier;
- (2) Credit life, credit accident and health insurance, or involuntary unemployment credit insurance;
- (3) Mortgage guaranty insurance;

(4) Personal property insurance sold to a debtor under a master group policy issued to a creditor;

(5) Crop hail insurance;

(7) Title insurance; provided, that the limited lines producer is an attorney, duly licensed in this state, who acts as a title insurance agent as an ancillary part of the attorney's practice of law;

(8) Portable electronics insurance; or

(9) Any other lines that the commissioner finds by rule are essential for the transaction of business in this state and do not require the professional competency demanded by an insurance producer's license.

SECTION 10. Tennessee Code Annotated, Section 56-6-104, is amended by deleting the section in its entirety and by substituting instead the following:

56-6-104.

(a) Nothing in this part shall be construed to require an insurer to obtain an insurance producer license. In this section, "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director, or employee of an insurer or of an insurance producer; provided, that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and;

(A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) The officer, director, or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans, or performs administrative services related to mass marketed property and casualty insurance, where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of

the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state; provided, that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; provided, that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(7) A salaried full-time employee who counsels or advises an employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer; provided, that the employee does not sell or solicit insurance or receive a commission;

(8) Any regular salaried officer, employee, or member of a fraternal benefit society that provides benefits in case of death or disability, resulting solely from accident, and that does not obligate the officer, employee, or member to pay natural death or sick benefits, the officers, employees, or members procuring other members and receiving no compensation for the procurement other than awards or merchandise nominal in value; or

(9) An officer, director, employee, or authorized representative of a business entity engaged in the sale, solicitation, or negotiation of portable electronics insurance licensed pursuant to and acting in compliance with Sections 2 - 8 of this act;

(10)

(A) An officer, director, or employee of a vehicle rental company engaged in the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days;

(B) The insurance that may be offered pursuant to this subdivision (b)(10) is limited to:

(i) Personal accident coverage that provides protection for renters and other rental vehicle occupants for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs during the rental period;

(ii) Liability coverage that provides protection to renters and to other authorized drivers of the rental motor vehicle for liability arising from the operation of the motor vehicle during the rental period. The liability protection, when purchased by a renter, shall be deemed to be primary over any other coverages that may be available to the renter or other authorized driver of the rental vehicle to the extent of the protection provided;

(iii) Personal effects coverage that provides protection to renters and other motor vehicle occupants for loss of, or damage

to, personal effects in the rental motor vehicle during the rental period; and

(iv) Roadside assistance coverage;

(C) As used in subdivision (b)(10)(B), “motor vehicle” or “rental vehicle” means a private passenger motor vehicle, including passenger vans, mini vans, and sport utility vehicles, and a cargo motor vehicle, including cargo vans, pickup trucks, and trucks with a gross vehicle weight of less than twenty-six thousand pounds (26,000 lbs.);

(D) Each person engaged in the sale of optional insurance products pursuant to this subdivision (b)(10) shall give each renter who purchases the coverage brochures or other written materials that:

(i) Summarize, clearly and correctly, the material terms and conditions of coverage offered to renters;

(ii) Identify the insurer;

(iii) Describe the process for filing a claim in the event the renter elects to purchase coverage;

(iv) State that the purchase of the coverage is not required in order to rent a vehicle;

(v) Disclose that the coverage offered by the rental agreement may provide a duplication of coverage already provided by a renter's personal automobile policy or by another source of coverage; and

(vi) Itemize the cost for the coverage separately;

(E) The commissioner may seek the sanctions provided in former § 56-6-112(e) against a vehicle rental company upon a finding that an

officer, director, or employee of a vehicle rental company has violated § 56-6-112(a)(2), (4), (5), (7), (8), or (10) in connection with the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days.

SECTION 11. This act shall take effect July 1, 2011, the public welfare requiring it.